1952 **File No.** O. Merged States /52

P 98E Legal Deptt.

A **BRANCH**

Subject:— Opinions regarding Merged States

O. Merged States /52

File No.

Gen. 194

208-A

C O N T E N T S.

L gal Department. File No. O.Merged States/1952.

Sr.No.	R.I. / O.No.	Subject.	Pages.
		Opinions regarding Megged States.	
1)	373 12-1-52.	Re: Private property of Maharana of Jambughode.	1-2.
2)	580 15-1-52.	Re: Demand made by the Under Secy. Indian Council of agricultural Research for payment of the balance of the contributions due from the ex-Baroda State. Whether this Govt.is liable to pay the outstanding dues.	3-4.
3)	1750 4-2-52.	Re: Darbari Land given by Ida- State to certain person for building purposes subject to the condition that the construction should be made within 12 months from the date of approval of the plan. Whether in the absence of any condition in the pursuance providing for forfeiture of land for breach of the condition of the grant, the land can legally be forfeited to Govt.	5-6.
4)	1854 5-2-52.	Whether the Govt. of India Act, 1935 as well as the Financial Rules became automatically applicable to the merged State on its merger.	7-10.
5)	2072 9-2-52.	Re: Scheme framed under the Baroda Encumberred Estates Act (Baroda Act No.V of 1909) for the settlement of the debts of Inamdar.	11-14.
6)	2269 12-2-52.	Re: A permanent lease of certain land sanctioned by he chief Minister of Sirohi State in favour of certain person whether the order passed by the C.M. of Sirohi State sanctioning the grant of the lease should be recognised by this Govt.	15-18.
7)	2412 12-2-52.	Whether on the Merger of Mansa State it would be possible to recover the excess payment made to Rawars of Mansa by filing a suit against them.	19-24.
8)	3307 29-2-52.	Whether there would be any qualification to refusing to recognise the adoption of Shri Bhupat which took place in 1908 especially in view of the interpretation of	

Sr.No	R.I. / O.No.	Subject.	Pages.
8)		(in Contd.....) interpretation of rule 16 of the Ankodia Rules by the Distt.Judge, Baroda.	25-26.
9)	4572 25-3-52.	Re: Private property of Maharana of Jambughada:	27-28.
10)	5019 2-4-52.	Re: Alienations of various kinds of properties made by the late Maharaja of Rajpipla including properties recognised as the private properties of the Ruler. Whether any settlement in this respect can be arrived at by approaching the courts in view of the fact that the matter arise out of the merger agreement.	29-52.
11)	5182 5-4-52.	Whether the Kolhapur Sugar Mills Irrigation Act,1943, stands repealed after the application of the various contract and B'bay Acts to the areas of Kolhapur State on its merger or it still continues to be in force.	53-54.
12)	4746 28-3-52.	Re: Alienation of Villages made by the ex-Maharaja of Rajpipla in favour of his son.	55-58.
13)	5489 12-4-52.	Re: Merger agreement entered with the Maharaja of Kolhapur by which he has been granted the exclusive right to shoot in Radhanagari forests and the Raibag Park.	59-62.
14)	5708 17-4-52.	Re: The Pujari of the Mahakalishwar Temple of Madana who before the merger was being paid a monthly remuneration of Rs.18/- from the State Treasury. Question regarding continuing the remuneration even after merger.	63-66.
15)	6180 23-4-52.	Re: Telephone System in the merged States which vested in the Govt. of India after merger.	67-68.
16)	419-Confl. 6-5-52.	G.C., P & S.D.No. 3485/46-F. dt. 2-5-52. Re: Private properties of Rulers of merged States.	69-70.
17)	6706 30-4-52.	Re: Zamindari Agreements entered by the Thakors of Sankheda and Pandu Mewas for the merger of their Estates with B'bay.	Not typed 71-74.

Sr.No.	R.I. / O.No.	Subject.	Pages.
18)	7928 2-5-52.	Re: Appointment of Patil of the Village Kerva by the Ruler of Sant State who was assigned lands assessed at Rs.30/- and who was paid the remuneration of Rs.57 as Patil. Whether this Govt. is liable to pay the amount of difference viz.Rs.27(57-30?27) prior to the date of the merger and whether it could legally order the Thakore to refund the land revenue with effect from 1929.	75-78.
19)	7965 13-5-52.	Re: Sale to private persons during 1947-49 by Thakore of Vijiaria in Naswadi Taluka of the buildings used as officer's quarters by his karbhari, Naib Karbhati and Talati. Whether this Govt. can file a suit against the Thakore for recovery of the buildings. (Pl.see R.L.A's No.18359 dt.5-11-52.)	79-82.
20)	8274 17-5-52.	Re: Perwana granted by the Palanpur State to same Company for collecting grazing charges in respect of cattle, sheep etc., grazing in the limits of the State. Termination of —— by this Govt. of the merger 1) Whether the Co.can be made to refund the fees already collected; 2) Whether the Co. can claim compensation an account of termination of the monopoly.	83-86.
21)	8278 17-5-52.	Re: Levy of royalty——by the Thakores of Angad a Village in Baroda Taluka for the removal of Kankar, Sand etc. from the lands in this Village. Question regarding following the provisions of the Land Revenue Rules 66 to 70 by the estate holders.	87-88.

Sr.No.	R.I./O.No.	Subject.	Pages.
22)	8634 23-5-52.	Whether Jamariya Jahagirdars in the merged State of Tharad are bound to pay the Jama to the State of Bombay.	89-92.
23)	8646 23-5-52.	Re: Request from the D.L.B. Baroda to this Govt. to give to the Board the amount of Local fund cess collected in areas xxx among others and the old Sankheda and Pandu Mewas Estates.	93-94.
24)	8085 15-5-52.	Re: Buildings in merged States rented to Postal Department vesting of ---	95-96.
25)	8690 24-5-52.	Re: Alienations in merged States.	97-98.
26)	9714 11-6-52.	Re: Access to the present ruler of Rajpipla to the "New Palace" where some papers are left by the late Ruler. Whether it would be feasible to ask the collector to let His Highness have access to the papers and to screen off the portion of the Palace where the office papers are kept.	99-102.
27)	10377 21-6-52.	Whether the property known as Deoghar Building at Shahpur can be treated as private property of the Raja of Sangli.	103-106.
28)	11327 9-7-52.	Re: Bestowing by the Maharana of Sant State of full forest rights on Jahagirdars of certain villages. Selling the right of cutting trees to a contractor by same jahagirdars. filing of suit by the contractor as he was forbidden by the forest Deptt. from executing the contract.	107-108.
29)	11767 16-7-52	Re: Loss of movables from Govt. custody.	109-110.
30)	7043 5-5-52.	Re: Income tax payable by Shahu Chhatrapati Mills which is now a Govt. property in view of merger of Kolhapur State.	111-112.

Sr.No.	R.I. / O.No.	Subject.	Pages.
31)	3485 6-6-52.	Re: ——— do ———	113-114
32)	12375 26-7-52.	Whether the liability of the Baroda State Govt. to is share to-wards the contributory provident fund of its employees will devalve on the Bombay Govt. after the merger of the Bombay State.	115-116
33)	9899 13-6-52.	Re: Jahagir attached to the Kolhapur ~~North~~ Math	117-118
34)	12389 26-7-52.	Re: Refund of excise duty by this Govt.	119-120
35)	12692 31-7-52.	Re: Transfer of the N.K.High School, Petlad, to the Petlad ~~Education~~ Education Trust.	121-122.
36)	13817 23-8-52.	Re: Payment of certain sums by the Baroda State to the Indian Council of Agricultural Research on its becoming a constituent of the council. Whether after merger B'bay Govt. is liable to pay the dues to the Council.	123-126
37)	14783 10-9-52.	Re: Division of Chakariat lands granted to a Village servant by the Baroda State for the performance of Village service.	127-132.
38)	15413 19-9-52.	Re: Cases under the Baroda Dhoy Mitandha and the Baroda Daba Nijam pending in the Resident first class Magistrate, Patana, in respect of effences committed before the merger. Whether these cases can at all be continued in view of the ~~xxxxxxx~~ repeal of the relevant Acts and (2) if so, before which tribunal.	127-130 not typed 133-144.
39)	15455 19-9-52.	Whether the Bbay Govt. as the successor of the Govt. of Baroda is bound to continue to pay the annual grants of certain amounts which the Baroda State was paying up to its merger with Bombay to the Devasthans.	135-130 not typed 145-146.

Sr.No.	R.I. / O.No.	Subject.	Pages.
40)	15907 26-9-52.	Question as to how to get the possession of the land which was a State property but was sold by the Thakore of Tharad to certain person.	147-148.
41)	16296 4-10-52.	Whether the Govt. of Bombay as the Secoesser of the Cambay Darbar is under an obligation to pay to the Western Railway certain sum on account of the interest and maintenance charges of the Railway siding and loading platform constructed and maintained by the Tarapur Cambay Railway.	149-152.
42)	16758 11-10-52.	Re: Gabat Estates in the Gabat State.	153-156.
43)	17424 21-10-52.	Re: Grant of loan by the Ruler of jowhar state to certain person for starting a vegetable farm. Whether the loan of Rs.2000/- paid till merger of the state can be recorded by this Govt. in lump.	157-160.
44)	18359 5-11-52.	Question regarding filing of a suit for eviction against the Thakore and the purchaser.	161-162.
45)	18928 3-11-52.	Question regarding recovery of jama dues from the Vanod State (now in Saurashtra) which it owed to Baroda State.	163-166.
46)	18981 14-11-52.	Re: Merger Agreement executed by the Thakore of Tharad.	167-168.
47)	19212 18-11-52.	Re: Merger Agreements executed by Thakores of Pandu Mewas Estates — Abakari Revenue —— Whether private property.	169-170.
48)	20001 28-11-52.	Re: Merger Agreement Private Property of chief of surgana two jagir villages.	171-172.
49)	20160 2-12-52.	Whether the executive orders issued by the Rulers or Administrators of the Indian States ordering the Local bodies not to levy the sales tax on motor Vehicles has the force of an Act.	173-176.

Sr.No.	R.I. / O.No.	Subject.	Pages.
50)	20687 9-12-52.	Re: Grant of certain Villages by H.H. ~~Khubchan~~ the late Maharaja of ~~Kha~~ria to his second son. Contract intered by the Rajmata, guardian of the minor son with a contractor for cutting trees from the forests in the said villages. Whether this Govt. is bound by this Contract.	177-184
51)	22004 29-12-52.	Re: Merger Agreements — reprodiation of the tharav issued prior to merger.	185-194.

SNI/5.7.

Legal Department.

Private Property of Maharana of Jambughoda

R.L.A's opinion No. 16515, dated 18-10-51.

The Legal position has been discussed at length in R.L.A's opinion No. 16515, dated the 18th October 1951. As the forest areas in question were held by the Maharana qua Ruler before merger, the contention of Shri G.N. Joshi that the forest areas having been included in the inventory of private property are of absolute ownership of the Rana Saheb is incorrect and untenable. If however with a view to avoid the unpleasant complications that are likely to arise as a result of the breach of contract Government desires that the contract be allowed to be fulfilled, there would be no objection to Government so allowing the Maharana as a special case without conceding his full proprietary rights. The Political and Services Department may however consider whether this would not create an awkward precedent.

Sd/- J.R.Dhurandhar.
11/1

Additional Secretary to Government.

U.R. to P. & S.D. No. 373, dated, 12th January 1952.

LNT/1.7.

Legal Department.

As pointed out in R.L.A.'s opinion No, 13184 dated 18th September 1950, since the liability to pay part of the contribution is relateble to the Union subject (item No.65(b) in the Union List in the Seventh Schedule to the Constitution), it would be for the Union Government to meet that liability. Since the original letter of the Agriculture and Forest Department is reported to be misplaced, it appears that the Indian Council of Agricultural Research has had no occasion to consider the view point urged in that letter. Furnish a copy of its letter dated 26th October 1950 to the Indian Council of Agricultural Research and then await its reply.

It is necessary to examine the grounds on which the Government of India have advised the Council to recover the balance from the Bombay Government and Agriculture and Forest Department of India's advice. As it stands there are no fresh grounds to reconsider the view taken in R.L.A.'s opinion No13184 dated 18th September 1950.

Sd/- J.R.Dhurandhar.
15/1.

Additional Secretary to Government.

U.R. to A & R.D.No. 580, dated the 15th January 1952.

SMT/1.7.

LEGAL DEPARTMENT.

The view taken by R.D. is correct. The parwana granted in 1937 by the Idar State provides that the land was granted for the express purpose of constructing a building within a certain period. The grantee failed to fulfil the condition. The land was therefore, resumed in 1942. It is true that on 2nd June 1948, on the eve of the merger of the Idar State, the land was restored to the original grantee. But it was restored on the express condition that the building was to be constructed within six months. This period expired on 2nd December 1948. The land was therefore liable to resumption on that day, and the purchaser thereof cannot get a better title. The order of the Collector resuming the land is therefore legal and proper.

Sd/- J.R.Dhurandhar.
4/2.

Additional Secretary to Government.

U.R. to R.D., No 1750, dated the 4th February 1952.

SNT/1.7.

Office of the R.L.A.

From the letter of the Chief Administrator, Sangli, (No. 61/o/8-9091, dated 18/20-6-49) it appears that a theft of opium and hemp drugs was committed in the office of the Miraj Prant Mamlatdar on 15th June 1949 at 9-30 A.M. and the drug worth Rs. 335-1-6 were found missing. Though the District Superintendent of Police, South Satara, made inquiries in the matter, no culprit could be traced nor the stolen articles were detected. In view of this circumstance, the Prohibition and Excise Commissioner suggest that the amount, Rs.335-1-6, being the price of the stolen drug, be ordered to be written off. The Revenue Department suggested that in view of the peculiar circumstances, the amount in question may be written off, but the Finance Department insisted that in view of the peovision of rule 336 of Financial Rules the question should be taken up with a view to see whether the loss or any part of it cannot be recovered from the persons found responsible. In his letter No. WS-V-700 dated 26-4-1951 the Collector Satara South, states that as Financial Rules 336 was not applicable then, the drugs were not kept in the Treasury Strong Room, but were kept in safes or cupboards. In view of these facts, the question for R.L.A's consideration is whether the Government of India Act, 1935, as well as the Financial Rules became automatically applicable to the merged area of former Miraj State on its merger.

Under paragraph 3 of the Administration of Indian States Order, which came into force 10-6-1948 in the Indian States specified in Schedules II to III, the Chief Administrators and Administrators were appointed for the executive administration of a State or group of Indian States. Under paragraph 4, such provisions, or such parts of provision of law or of any notification, order, scheme, etc. made or prescribed under any law which were in force immediately before 10-6-1948 were continued in force until altered, repealed or amended by an Order under

the Extra-Provincial Jurisdiction Act, 1947. Under paragraph 8, every person who immediately before 10-6-1948 was exercising lawful function in each Indian State, continued to do so until his appointment was determined. In modification of the Administration of the Indian States Order, Government of Bombay made the Indian States (Application of Laws) Order, 1948, which came into force in the Indian States from 27th July 1948. Under paragraph 3 the enactments specified in Schedule II along with all the notifications, orders, schemes, rules, by-laws, etc. made thereunder and in force in the Province before 28-7-1948 were extended to and brought into force in the Indian States. Though the enactments mentioned in Schedule II were brought into force in the Indian States, for the purposes of administration the states were not administered as part of the Province of Bombay. It was in pursuance of Article 3 of the States Merger (Governor's Provinces) Order, 1949, that with effect from 1-8-1949 the States specified in each of the Schedules were administered in all respects as if they formed part of the Province specified in the heading of that Schedule. As the Miraj State formed part of the territory of the absorbing State of Bombay from 1- 8-1949, the Government of India Act, 1935, and the Financial Rules automatically applied to the State area from that date. It is, therefore, clear that the Finaicial Rules were not in force in the former Miraj State area on 15-6-1949, the date on which theft was committed. The view expressed in the Finance Department office note dated 8-11-1951 does not, therefore, appear to be correct.

Sd/- P.M.LAD.
4/2.

Remembrancer of Legal Affairs.

U.R. to F.D.No. 1854, dated the 5th February 1952.

SMT/2.7.

Legal Department.

It is true that the Baroda Encumbered Estates Act, 1909, is some what akin to the Bombay Court of Wards Act, 1905. Both the Acts provides for taking over the management of the estates of land-holders, which term includes Jamindar, Jagirdar, Sarangamdar, Inamdar, Talukdar, etc. But the principle underlyingg each of these Acts is quite different. According to sections 4 and 5 of the Bombay Court of Wards Act, 1905, the Court of Wards can assume the management of the property of a landholder if he is deemed to be disqualified to manage his own property. Under the Baroda Encumbered Estates Agt, 1909, such a disqualification is not specifically attributed to the estate holder. The object of the Baroda Act is to make provision for relieving the estate holder of the debts incurred by him. To achieve the object, the Act provides for taking over management of the estate holder, and for inquiry by the District Court into the debts owed by such estate holder and determining the amounts of debts payable to various creditors. When the amounts are so determined the District Court has to frame a scheme showing the order in which the debts are to be repayed to various creditors. The scheme so framed requires the sanction of Government. The Barada Encumbered Estates Act, 1909, is not, therefore, a law corresponding to the Bombay Court of Wards Act, 1905, particularly when the authorities vested with power are different. It does not correspond to any other Central or Bombay Act so far extended to the areas of the Baroda State. The said Baroda Act may, therefore, be deemed to be continued in force by virtue of the provisions of paragraph 5 of the Baroda State (Application of Laws) Order, read with paragraph 4 of the States Merger (Governor's Provinces) Order, 1949.

2. The presumption made by the R.D. relying upon the provisions of the Bombay Merged States (Laws) Act, 1950, is not correct.

Sd/- J.R.Dhurandhar.
8/2.

Additional Secretary to Government.

U.R. to R.D.No. 2072 , dated the 9th February 1952.

SHT/2.7.

1935/29-1-1952.

Submitted with reference to R.D. note at pp. 25-27 ante. It appears that by his order dated the 28th December 1949 the Chief Minister of Sirohi State sanctioned a permanent lease of land measuring 11 beghas and 8 Biswas in favour of Maharaj Abhayasinghji on payment of a sum of Rs. 4200/-. The land pertained to the village Manchgam, the tenure of the lands in which, as the Administrator, Sirohi State, reports in his letter at page 1 ante is quite differeht from the tenure prevailant in other areas. The tenants have got occupancy fights and pay Bighoti to the State. They cannot be compelled to relinquish their lands which are in their possession for several decades. They have the right of transferring their holdings amongst themselves. Out of the land leased to Maharaja Abhayasinghji land measuring two Bighas and four Biswas belongs to this tenure. The tenants were not consulted when the lease was granted, The possession of the lands has not been handed over to the lessee; not are the tenants prepared to had it over. In the circumstances the R.D. proposes that the order passed by the Chief Minister sanctioning the grant of the lease should not be recognized; and that it should be set aside and the occupancy price paid by the purchaser refunded. The R.L.A. is requested to advise.

SMT/2.7.

Office of the R.L.A.

Apparently the land appears to have been disposed of by the Chief Minister of Sirohi in violation of the customary rights of the tenants and that too on the eve of the merger of the State. In the circumstances the grant having no legal sanction, need not be recognised by Government. The action proposed by R.D. would be legally feasible.

Sd/- P.M.LAD.
11/2.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 2269 , dated the 12th February 1952.

SNT/2.7.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether it would be possible to recover the excess payment of Rs.7,200/- made to each of the Kumars of Mansa by filing a suit against them.

2. The facts leading to this question are :- after the merger of Mansa, Shri Ratnam who was deputed to examine the accounts of the State made a report as regards the various claims due to the four Kumars of this State. According to Shri Ratnam a sum of Rs.71064/2/3 on account of principal and Rs.28800/- on account of interest for the period from 1st July 1936 to 30th June 1948 was payable to the four Princes as shown below:-

1.	Kumar Shri Jaswantsinhji	Rs. 31043-11-3
2.	" " Himmatsinhji	Rs. 16877-3-4
3.	" " Ghanashyamsinhji ...	Rs. 26607-0-0
4.	" " Dasharathsinhji	Rs. 25336-3-10
		Rs. 99864-2-5

In arriving at this figure Shri Ratnam had drawn a presumption that a sum of Rs. 68182-3-0 which the Ruler of the State had spent on the construction of four Buildings for each of the princes was debitable to the account of the State; but this was not accepted by Government and one-fourth of the total amount spent on buildings was deducted from the amounts shown as due to each of the Kumars. The Collector of Ahmedabad was accordingly directed in Government Letter dated 17th March 1949 to pay the amounts calculated after deducting the amounts spent on buildings. In the concluding portion of that letter it was observed that each of the Kumars was entitled to interest at 6% per annum on Rs.10,000/- (which sums had been credited to their accounts in 1933) with effect from 1st July 1948.

3. On this the four Kumars sent a representation to Government praying that the amounts spent on buildings

may be borne by the State ; and that although Government had directed payment of interest to be made on the sums of Rs. 10,000/- standing to the credit of each of them with effect from 1st July 1948, they had not been paid interest for the period from 1933 to 1948. This was, however, not correct as the total amount reported by Shri Ratnam was due to each of them included an amount of Rs.28,800/- due on account of interest for that period (1933-1948) on the sums of Rs.10,000/- to the credit of each of them. The former request was, on reconsideration, granted by the Government; but as regards the latter (that is payment of interest) they were merely informed that Government regretted that it could not be granted (P & S.D. Letter dated 1st July 1949).

4. Against that decision of Government Kumar Shri Himmatsinhji presented a further representation to Government in reply to which he was informed as in the letter dated 21.1.1950. Unfortunately, this letter was not happily drafted; and in bringing out one fact that the interest prayed for had already been calculated by Shri Ratnam and included in the total amount shown as due to each of the Kumars, the P & S.D. stated, "Government has allowed this and issued necessary orders to the Collector accordingly." The last para of that letter stated "The Collector has been instructed to make payments accordingly." A copy of this reply was forwarded to the Collector of Mehsana, Reading the orders quoted above the Prant Officer to whom the Collector endorsed a copy paid a sum of Rs. 7,200/- each to the four Kumars. Thus a sum of Rs. 28,800/- has been paid to them though that was not the intention of Government. The question is how this amount should be recovered from them.

5. It would be seen from the facts stated above that a sum of Rs. 7,200/- has been paid to each of the Kumars through a mistake of fact. "Money paid voluntarily

under a mistake of fact is recoverable both at law and in equity where it is against justice and conscience that the receiver shall retain it". (Kerr on 'Fraud and Mistake' page 635). "The mistake must be mistake as to a fact which if true would make the person paying liable to pay the money, not where if true it would merely make it desirable that he should pay the money." (ibid page 636). Section 72 of the Indian Contract Act, 1872, also prescribes the liability of persons to whom money is paid by mistake to repay it. In this case there was no mistake of law; but the principal reason for the payment was misunderstanding. It would, therefore, appear to be legally feasible to institute a suit for recovering the amount from the four Kumars (See also Story on Equity, section 140 page 62). In this connection attention is invited to the statement as 'A' in Shri Himmatsinhji's letter at 123 ante where he states that "he is prepared to abide by the decision of Government regarding the refund of Rs. 7,200/-. "This appears to be a sort of admission of the claim of Government. It may further be pointed out that Government is under an obligation to pay a sum of Rs. 6,500/- to Kumar Shri Jaswantsinhji on account of Tikka money. It would be possible to set off the claim of Government against Shri Jaswantsinhji's dues to that extent. Refund of the amounts can be claimed from the other Kumars.

Sd/- P.M.LAD .
13/2.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.No. 2412 dated the 14th February 1952.

SNT/2.7.

Legal Department.

The interpretation put upon rule 16 of the Ankadia Rules by the District Judge of Baroda has been confirmed by the High Court and will have to be accepted. According to that interpretation the right of Government is restricted to the levy of the nazarana. It would not enable Government to refuse the recognition of the adoption.

Sd/- J.R.Dhurandhar.
28/2.

Additional Secretary to Government.

U.R. to R.D. No. 3307, dated the 29th February 1952.

SNT/2.7.

Legal Department.

Though the forest in question has been included in the list of the private properties of the Maharana of Jambughoda, he is only conceded the right to cut timber for building purposes and fuel and grass. The ownership of the forest vests in the State Government subject to t e above rights. The Maharana has, therefore, no authority to sell the forest produce and appropriate the income. However, as pointed out in the opinion dated 12-1-1952 there would be no objection to allowing the Maharana as a special case to execute his part of the contract and retain the amount, provided he is clearly given to understand that the proprietary rights vest in the Government of Bombay and Government's permission to retain the amount this time should not be considered as conceding his proprietary rights. The view expressed by the Chief Secretary in his note dated 10-3-1952 is correct.

Sd/- J.R.Dhurandhar.
25/3.

Additional Secretary to Government.

U.R. to P & S.D., No. 4512, dated the 25th March 1952.

SNT/2.7.

Opinion recorded by Shri.M.C.Setalvad in the Maharaja of Rajpipla's Case.(in P & S.D.File.2751/46.)/

1. The question raised deal mainly with the right of the late Ruler to dispose of the properties which he has purported to dispose of inter vivos and by wills. His capacity to deal with the properties has to be examined in reference to two periods of time; first, before the Merger Agreement and, secondly, after that agreement having regard to the classification of the properties contained in the inventory.

2. In one view a Hindu Ruler may be looked upon as an ordinary Hindu owning property consisting of all the belongings of his State. There would be no distinction between State property and private property. He would in that view be competent to deal with an dispose of properties in his possession on the same principles as an ordinary Hindu. All the property in his possession would be either joint family property in which his co-parceners would have an interest by birth or his self acquired property. If it is the former, he would have no power to dispose of it either inter vivos or by will unless he happens to be the sole surviving co-parcener. He will have unrestricted power of disposition over the latter. Succession in the case of intestacy would be governed by the ordinary Hindu Law.

3. Another view would be to regard the State somewhat in the nature of an impartible Hindu Raj or sovereignty as some ancient Zamindaris have been regarded. In that view the property of the State would be impartible and would have to descend by primogeniture. There would be no right to partition in a co-parcener. There would however be in view of the line taken by the latest Privy Council decisions a co-parcenery to the extent that there would be a right of succession in the co-parcener by survivorship. The Ruler would have in this view an absolute right of disposition inter vives or by will

over ..

over the whole property in his possession. See the incidents of impartible property dealt with in Mulla's Hindu Law 10th Edition at pages 635 etc.

4. A third view would take into account the fact that under Hindu Law generally as well as the custom governing the Indian States, the State is looked upon as an entity of a body corporate which is to have a perpetual existence. For the purpose of carrying on the State revenue are raised. The State is personified as it were in the person of the Ruler who owns all property belonging to the State. Though these properties are in the name and under the control of the Ruler he is not the absolute owner of them. He may out of these properties make disbursements for the purposes of the State and for the purposes of himself and his family. Grants may be made out of the properties for the maintenance of the members of the Ruler's family. He may even set apart certain property thereout as his personal property. But except in reference to such personal property he would have no general rights of disposition either inter vivos or by will of the property in his possession as a Ruler. This view is not be based on any specific text of Hindu Law of an any decided cases. It is rather be based on the nature of a Hindu State and the custom which has governed the Rulers of the Indian States during a century and a half under British paramountcy.

5. I prefer the third or the last of the above mentioned views.

6. Though theoretically the Rules was regarded as legally competent to dispose of all the property of the State in course of time a line came to be drawn between public or State properties and the private properties of the Rules. The Ruler himself decided as to what was to be treated as state property and what was to be treated as his private property. He would

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at will transfer an item of property from one class to the other.

7. The system of the Ruler drawing from the revenues an amount by way of a privy purse was, in its origin, a restriction imposed by the Ruler on himself. He made it a rule to draw from the state revenues year by year only a fixed sum which was to be utilised for the expenses of himself and his dependants. He would, in the course of time, make savings from the amount so allocated to him which would be regarded as his private property as distinguished from State or public property.

8. This distinction between public and private property was not always very clear before the 15th of August 1947. Prior to that date the Ruler did make dispositions of their property during their lifetime. These were made mainly for the support and maintenance of junior members of the family and dependents. Unless made with the approval of the representative of the paramount power major dispositions were liable to be ineffective after the lifetime of the Ruler. On the death of the Ruler the property of the State would as a whole pass to his successor who would be chosen according to the rule of succession applicable by custom either to the family of the Ruler or to the particular State. Whatever the Ruler's rights in reference to his personal property he did not generally make any disposition of it by will. This appears to be to be the position which subsisted in regard to Rules in relation to property in their possession during the hundred and fifty years during which the British exercised rights of paramountcy over the States.

9. At the time when Merger Agreements were entered into Rulers of Indian States would seem to be in possession of properties in three kinds. The first was State or public property like buildings, used for state and administrative

purposes ...

and funds earmarked for such purposes. Then there were state properties which were set apart, as it were for the use of the Ruler like palaces guest houses and so forth. Finally there was what may be called the personal property of the Ruler for example, property acquired by him in or outside India from savings made out of the amounts allotted to him for his personal expenditure or otherwise acquired by him..

10. By the Merger Agreements the properties in the possession of the Ruler have been divided into two classes, namely, "State Properties" and "Private Properties". In the category of "State Properties" would appear to be included the first kind of property which I have described in the last paragraph viz. state or public property. In the category called "Private Property" there would seem to be included mainly the second class of properties mentioned in the last paragraph, namely, those set apart for the use of the Ruler. It may be that in some cases in the category of private properties there also are included what may be regarded as the personal properties of the Ruler.

11. In considering the effect of the Merger Agreement the important fact that is to be remembered is that the Agreement is entered into with the Ruler in his capacity as a Ruler. In the present case the Articles of Agreement are between the Governor General of India on the one hand and the Maharaja of Rajpipla on the other. Article 3 provides inter alia that "the Maharaja shall be entitled to the full ownership use and enjoyment of private properties (as distinct from state properties) belonging to him on the date of this agreement." It would therefore appear that the gurantee given by the document to the Maharaja in his capacity as a Ruler is that him the Ruler, is entitled to " the full ownership, use and enjoyment" of all the private properties. The Agreement being entered into with him in his capacity as a Ruler, he would be entitled to these rights over these ..—

properties until and so long as he remains a Ruler. At his death these properties would have to be treated as "the private properties" of the succeeding Ruler. The words "Private properties" would seem to have been used as meaning state properties set apart for the use and enjoyment of the Ruler for the time being. The expression does not seem to denote the personal property of the Ruler.

11. If this be the correct view the effect of the Merger Agreement would be that by it the Maharaja agreed to treat "private properties" as being properties attached to the Rulership for the time being which he was not capable of dealing with or disposing of either inter vivos or by will. It would be property set apart for the use and enjoyment of the Ruler so that he and his successor Rulers may with the aid of these properties maintain their status and dignity. It would be open to the Ruler notwithstanding the Merger Agreement to deal with and dispose of as he likes the income of these private properties and any other personal property which he may happen to possess.

12. I will now deal with the questions in the light of the views expressed above. It may however be made clear that it is difficult to answer the questions arising in regard to the disposition of properties on the basis of any recognised or well accepted legal principles.

1 & 2. These questions have I think been sufficiently answered by the views generally expressed above. Prior to the Merger a Maharaja or Ruler could dispose of Inter Vivos his personal properties. He could also make dispositions of other properties for the maintenance and support of the family. He could probably also make

make a disposition by will of his personal properties. I do not know however of an instance of such a will having been made. After merger the Ruler would be competent to dispose either inter vives or by will of only his personal property. The "Private properties" under the Merger Agreement would not necessarily be his personal properties. It may be tha in some cases the inventory or private properties happends to include his personal properties, he could dispose of these even though included in the Inventory. The status of a Ruler after merger still remains that of a Ruler. He would appear to be a Ruler without a State. He retains the privileges and dignity of a Ruler with rights to his privy purse and private properties in the manner mentioned above. His status depends on his continued recognition as a Ruler.

3(a). The Maharaja would have no rights of disposition inter vivos or by will over the corpus of these properties except in respect of such of them as are his personal properties.

3(b). Alienation of properties whether disclosed in the inventory or not, would be good if they are alienation of his personal properties which he was entitled to dispose of inter vives prior to the Merger Agreement. The nature of the properties will have to be ascertained from the source from which they were acquired.

3(a). Allienations made even after the Merger even of properties included in the inventory would be good if the properties happen to be his personal properties. This again will have to be answered with reference to the sources from which the properties have been acquired.

4(a).(b)&(c) By the declaration dated the 4th of April 1946, the Maharaja has declared that he was married to Miss Atterton on the 5th of January 1940 at Rajpipla according to the Gandharva form of marriage. This declaration by him his treatment of Miss Atterton as a wedded wife and Maharani and the dispositions purported to have been made by him in her favour as if she were his legally married wife would be evidence of a marriage having taken place between him and Miss Atterton. If the marriage is challenged, these facts would not by themselves however be sufficient evidence to establish it. The gandharva form of marriage would not appear to be obsolete. See Myne's Hindu Law pp.124 etc. But such a marriage could only take place between Hindus. This is a requirement of all Hindu marriages because Hindu law does not contemplate a valid marriage taking place between a Hindu and a non-Hindu. Further, even a Gandharva - mar iage requires the performance of certain essential the performance of certain essebtial ceremonies. See 12 Madras 72, 48 All. 126 at 133 and 25 Pat. 58 at pp. 61 to 65. A custom could however be proved by which some of even all of these

ceremonies . ..

ceremonies may be lawfully dispensed with In order therefore to esta-blish a valid marriage it will have to be proved by those allegi g it xxx that Miss Atterton became a Hindu prier te the alleged marriage and that the necessary ceremonies were performed, unless the ceremonies could be dispensed with by reasen of some custom prevailing in the Rajpipla family.

5. The will disposes of "all my real and personal estate whatsoever and wheresoever in the would including any entailed property of which I have power to dispose by will except my Indian real estate and my personal estate in India". The Maharaja would be competent like any other individual to make a disposition by will provided he complies with the legal formalities needed for the making of a will. I assume that these formalities have been followed in making this will. The real question therefore is whether the will can affect all the property that it purports to deal with. I think that the will will be ineffective and inoperative on all property save such property as may be regarded as the personal property of the Maharaja of the nature I have described above.

6. Here again the question is what property will be affected by the Indian will. In my view only the personal property of the Maharaja will pass under the will. For the reasons mentioned above, the private properties that

is ...

is, the properties set apart for the use and enjoyment of the Ruler for the time being will not pass under the Will.

7(a). The succession to the gadi and the property of the Maharaja will be governed by Hindu law as modified by custom prevailing either in the territory or in the family. I am informed that the customary rule of succession is the rule of primogeniture. The eldest son of the Maharaja will therefore succeed to the gadi as well as to the properties save properties which he was competent to dispose of by Will.

7(b). If there is a custom of primogeniture it would not be competent for the Maharaja to prevent its application. It would of course be competent for him to give away by will properties which he was competent to dispose of to persons other than the eldest son.

7(c). If the rule of primogeniture prevails the present Ruler would be the heir and successor to all the properties of the late Maharaja mentioned in the inventory save and except his personal properties which would pass under his Wills.

8. The answer to this would depend on the nature of the property disposed of by the deed in each case. If the property dealt with by the deed is the personal property.

9. No.

10. It is difficult to see how the rights which may be claimed under the various deeds.

does or wills by the beneficiaries and legatees could be effectively decided except by recourse to courts of law. It may be that so far as the properties in India are concerned the present Maharaja may be able to come to some solution of his dispositions regarding them with the co-operations regarding them with the co-operation of the States Ministry. Such considerations cannot however apply to the properties in the Commonwealth and foreign countries.

11. The Maharaja should try and maintain possession of all the properties of he has exclusive or joint possession. As to properties of which he is not in possession he could only acquire possession of them by seeking the aid of courts of law or by arriving at an amicable settlement.

SNT/3.7.

LEGAL DEPARTMENT.

In his representation made by the Maharaja of Rajpipla in regard to the alienations of various kinds of properties made by the late Maharaja including properties recognised as the private properties of the Ruler; the Maharaja has stated that the matters regarding which he has represented are matters arising out of the agreement of merger and as such they are outside the jurisdiction of the Courts under article 363 of the Constitution and that any settlement can be arrived at only by the executive orders of the Government. The R.L.A. is requested to advise as regards the validitye of this contention and as to how far the Maharaja can be helped by this Goverhment.

2. Article 363 of the Constitution provides that neither the Supreme Court not any other Court shall have jurindiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, Sahad or other similar instrument which was entered into or executed before the commencement of the Constitution by any Ruler and to which the Government of India was a party and which has been continued in operation after the coming into force of the Constitution or in any dispute in respect of any right accuring under or any liability or obligation arising out of any of the previsions of the Constitution, relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument, This article refers to two kinds of disputes (1) one arising out of the provisions of any treaty (in this case the agreement of merger) and (2) the other arising out of the previsions of the Constitution relating to such agreement. The disputes arising in the present

case .....

case do not appear to fall within thése article. They are apparently between the Maharaja of Rajpipla on the one hand and his step mother and other persons on the other. They will have to be settled by him by instituting suits in proper courts of law. One such dispute as as regards the gift of the bunglow known as "Manor" at Old Windso- near London. Though this bunglow is recognised as the p ivate property of the Ruler it will be for him to establ-ish that the Ex Maharaja had no power of disposal of the same. Attention in th s co nnection as invited to the opinion of Council Shri M.C.Setalwad whe e in answer to question No. 10 put to him he has suggested recourse to courts of law. The contention raised by the Maharaja has therefore no force and it does not appear Government can do much to help him in the matter. The Political and Services Department may however consider whether the matter should not be brought to the notice of the Government of India.

Sd/- J.R.Dhurandhar.
2/4.

Additional Secretary to Government.

U.R. to P & S.D.No. 5019 , dated the 2nd April 1952.

SMT/3.7.

Office of the R.L.A.

Out of the various Central and Bombay Acts which were extended to the Kolhapur State by the Kolhapur State (Application of Laws) Order, 1949, the only Act to which the Kolhapur Sugar Mills Irrigation Act, 1943, has any possibility of being considered a corresponding Act is the Bombay Irrigation Act, 1879. The latter Act, it appears, has been enacted to make provision for the construction, maintenance and regulation of canals, for the supply of water therefrom and for the levy of rates for water so supplied. While the Kolhapur Sugar Mills Irrigation Act, 1943, has been enacted with a view to preventing owners of lands from removing irrigation channels laid therein, maintained and controlled by a private party. The object of both the Acts being this different , one cannot be said to be co responding to the other. Moreover, from the endorsement of the District Government Pleader, Kolhapur at pages 53-54 it appears that the Bombay Irrigation Act was in force in Kolhapur prior to merger. Despite this, the Kolhapur Sugar Mills Irrigation Act was enacted by the Kolhapur State. This clearly shows that it was a piece of legislation quite distinct from the Bombay Irrigation Act. The Kolhapur Sugar Mills Irrigation Act, 1943, is not therefore a law corresponding to the Bombay Irrigation Act, 1879. Nor does it correspond to any other Central or Bombay Act so far extended to the areas of the Kolhapur State. The said Kolhapur Act may therefore be considered as continuing in force by virtue of the provisions of paragraph 5 of the Kolhapur State (Application of Laws) Order, 1949, read with paragraph 4 of the States Merger (Governors' Provinces) Order, 1949; and its continuance is not affected by the previsions of the Bombay Merged States (Laws) Act, 1950.

Sd/- P.M.LAD.
4/4.

Remembrancer of Legal Affairs.

U,R, to P.W.D., No, 5182, dated the 5th April 1952.

SNT/3.7.

3312 of 15-2-1952.

By resolution No. 145 dated 1-2-1948 the Ex-Maharaja of Rajpipla had gifted five villages of the State to Yuvaraj Shri Rajendra Sinhji (i.e. the present Maharaja) for the maintenance of the Yuvaraj, his family and dependants (copy at p.145 ante). When the list of the private property of the Ruler and the alienations made by him were under consideration, the future of this particular alienation was also discussed and it was decided that the lands would be allowed to continue in the possession of the Yuvraj till he succeeded to the Gadi after which they would revert to the State (vide note on item 6 at p.65 ante). The Maharaja of Rajpipla was informed accordingly (p.77ante). On the death of the Maharaja the Collector of Broach raised the question whether the villages in question should be taken possession of. But at this stage the new Maharaja made a representation that the villages in question had been gifted by his father to the prince and that he in his turn had also made a gift of the said villages to his minor son and heir apparent Shri Raghuvirsinhji. A copy of the gift-deed which is similar to the one made by the late Maharaja will be seen at page 149 ante. Dy.Secy. P.&.S.D., considers that as the decision of Government in regard to the alienation of the said villages by the Ex-Maharaja had been communicated to the Ruler, the present gift deed made in favour of the heir apparent cannot be considered to be valid. The R.L.A. is requested to advise in these circumstances whether there is any need to revise the previous decision of Government.

SNT/3.7.

Legal Department.

The effect of the Government decision communicated to the ex-Maharaja of Rajpipla in the Chief Secretary's D.O. letter dated 18th July 1949 is that the alienation of the five villages made by him by resolution No, 145 dated 1-2-1948 in favour of the Yuvaraj was recognised by this Government only to a limited extent, viz., till the Yuvaraj succeeded to the Gadi. On the happening of that event the lands reverted to the State and as stated by the Deputy Secretary, Political and services Department, the present Ruler had no authority to gift them away. For these reasons it does not appear necessary to revise the decision already taken by Government.

Sd/- J.R.Dhuramdhar
28/3.

Additional Secretary to Government.

U.R. to P & S.D., No. 4746, dated the 28th March 1952.

SNT/3.7.

6406
1/4/52/

Submitted with reference to Chief Secretary's note at p. 19 ante. According to paragraph 3(b) of the collateral letter to the agreement of merger entered into with the Maharaja of Kolhapur the Maharaja has been granted the exclusive right to shoot in Radhanagari forests and the Raibag Park. In P. & S.D. letter dt. 15/7/1949 the Chief Conservator of Forests was directed that nobody should be allowed to shoot in Radhanagari forests and the Park at Raibag and that nothing should be done to disturn the animals kept in Raibag Park. So far as Raibag Park is concerned the P & S.D. observes that though instructions were issued that nothing should be done to disturb the animals kept in the Raibag Park, it does not seem that the intention was that normal forest operations should not be undertaken. The R.L.A. is requested to advise whether this view is correct.

SNT/3.7.

Office of the R.L.A.

Para 3(b) of the Collateral letter to the agreement of merger entered into with the Maharaja of Kolhapur merely safeguards the exclusive right of the Maharaja "to shoot in Radhabagari forests and the Park in Raibagh." The privilege of shooting reserved to the Maharaja cannot be construed mx to affect the normal working of forest operations under the Indian Forest Act. The instructions issued to the Chief Conservator of Forest in Government letter dated 15th July 1949 should, however, be suitably amended. The view expressed by the Chief Secretary is correct.

Sd/- P.M.LAD.
10/4.

Remembrancer of Legal Affairs.

U.R. to P & S.D., No. 5489, dated the 12th April 1952.

SNT/3.7.

4750
7-3-52.

Submitted with ref. to R.D. note at p.13 ante. It appears that the Pujari of the Mahakalishwar Temple at Kadana was before merger being paid a monthly remuneration of rupee eighteen from the State Treasury. After merger the remuneration was discontinued by the Chief Administrater. The local Officers now propose that the remuneration may be continued to be padd to him. The R.D. proposed to accept this proposal subject to the following conditions :-

i) That the pujari gets the temple registered under the B.P.T.. Act, 1950, within one month.

ii) That this does not in any way confer any heredirary right upon him of performing puja etc. in the temple and that Govt. has every right to stop the cash allowance or appoint another pujari if his conduct is found to be unsatisfactory.

iii) That the pujari furnished proper security or securities for an amount equivalent to the value of the ornaments of the deity to be given in his possession.

The papers are shown to the H.L.A. before issue of orders accordingly.

SHT/3.7.

OFFICE OF THE R.L.A.

Seen and passed on to the F.D. There is no objection to issuing the orders as proposed by the R.D. But no useful purpose will be served by imposing the condition that the pujari shall get the temple registered. That condition may therefore be deleted.

Sd/- P.M.LAD.
14/4.

Remembrancer of Legal Affairs.

U.R. to F.D.No 5708 , dated the 17th April 1952.

SNT/3.7.

Office of the R.L.A.

Telephones were mentioned in entry 7 of the Federal Legislature list in the 7th schedule to the Government of India Act 1935. The Telephones were therefore deemed to be vested in the Dominion Government for the Central purposes within the meaning of paragraph 5 of the State Merger (Governor Provinces) Order, 1949. The telephone system (which includes telephone instruments) in the merged states after the merger of the states vested in the Government of India for the purposes of the Government of India. The telephones which were installed in the palaces and other places of the His Highness the Maharaja of Rajpipla therefore became vested in the Dominion Government and the same became the Government of India Property, which cannot therefore be considered to be the private property of the His Highness the Maharaja as contended by his Private Secretary. It is therefore but natural that the inventory of the private properties of His Highness the Maharaja does not include the said telephone instruments. The view taken at 'A' of Political and Services Department note at page 3 is correct.

Sd/- P.M.LAD.
21/4.

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 6180, dated the 23rd April' 52.

SHT/3.7.

L.D. R.I. No. 3590
19/2/52.

Submitted with ref. to Chief Secy's note at p.133 ante. The R.L.A. is requested to advise on the points raised at 'A' and 'B' in the P & S.D. note. The Thakors of Sankheda abd Pandu Mewas, who have entered into Zamindari Agreements in Type III for the merger of their Estates with Bombay, have agreed under clause (e) of the agreement to continue to pay the same amount of total annual contribution (known as Mewas Fund) as they were liable to pay to the Govt. of India immediately before the merger on account of the administration of the Estates together with any arrears that were then due from them. That clause further provides that the amount of the total annual contribution and of arrears so payable shall be the amount certified by the Accounts and Finance Officer or the Treasury Officer of the Ministry of States, Govt. of India, at Rajkot or Baroda. In para. 1 of G.R., R.D., No. 6860/49, dated 4/6/1951, the R.D. has directed that the current year's demand in full equal to 10 per cent. of their income plus 25 per cent. of the arrears in respect of the Mewas Fund should be recovered from the Thakors concerned each year till the arrears are cleared. It appears that the Collector has not yet been able to recover the amounts from the Thakors as he has not been able to obtain a certificate from the Accounts and Finance Officer as contemplated by clause (e) of the agreement and the G.R. dated 4/6/51 referred to above. The R.D., therefore, proposes that, as the figures of the annual contributions paid by the Thakors to the Govt. of India are readily available, there is no necessity of obtaining a certificate from the Accounts Officer as stated above. The

P. & S.D. , however, considers that as such certificate is required to be obtained under the terms of the agreements entered into by the Thokors, it will not be possible to dispense with the same and if any change is to be effected the agreement will have to be amended. In these circumstances, the following questions are raised for the consideration of the R.L.A. :-

(1) Whether it will be possible to dispense with the condition that the amount to be recovered from the Thokors shall be certified by the Accounts Officer or the Treasury Officer of the Ministry of States at Rajkot or Baroda.

(2) Whether a notice should be given to the Thokors to pay the amount within a particular period failing which a suit should be filed against them for recovery of the amount.

SMT/3.7.

Office of the R.L.A.

On the first question the view expressed in para 4 of the Political and Services Department note is correct. The words "the amount of annual contribution and of arrears so payable shall be the amount certified by the Accounts and Finance Officer or the Treasury Officer of the Ministry of States, Government of India at Rajkot or Baroda" in clause (e) of the Zamindari Agreement convey that no liability to pay the amount of contribution and arrears would arise until the demand for the amount due as certified by the Accounts and Finance Officer of the Treasury Officer of the Ministry of States, Government of India at Rajkot or Baroda, is made. Even Government Resolution, Revenue Department, No.6890/49, dated 4th June 1951, provides that the Collector should ma e arrangements to secure the certificate of Accounts Officers of the Government of India from Rajkot or Baroda and recoveries made by him without delay. So long as such conditions stands, its terms must be complied with.

2. As regards recovery, since it arises out of a political agreement it can be best done by bringing political pressure through the Government of India, or in consultation with them by following the same procedure, if that be feasible, which used to be followed in respect of arrears before merger.

Sd/- P.M.LAD.
29/4.

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 6706, dated the 30th April 1952.

SNT/3.7.

L.D.R.I. No. 2961 dt/ 12-2-52.

It appears that in 1929, the grand father of one Mansukh Dayalbhai (the applicant) was appointed as Patil of the village Kherva by the Ruler of Sant and was assigned lands assessed at Rs. 30-0-0. According to a State tharav of 1915, the remuneration of the Patil of Kherva was Rs.57-0-0; and it is stated by the Collr. that both the soil and the land revenue of the assigned lands were granted to the officiator by the Ruler. The lands are situated in a Jagiri village and the Jahagirdar has recovered full assessment from the grand father of the applicant as well as from the applicant. The applicant alleges that this is illegal and on merger of the State, he has applied to Govt. to direct the Jahagirdar not to recover the assessment and also to refund the assessment so far illegally recovered from him. The Rev. Deptt. considers that as according to the State Tharav remuneration was Rs. 57 and the assessment was only Rs. 30/ the Sant State was liable to pay to the Patel Rs. 27 per annum . The R.L.A. is now requested to advise whether this Govt. is liable to pay the amount of difference prior to the date of the merger and whether it could legally order he Thakore to refund the land revenue with effect from 1929.

SHT/3.6.

Office of the R.L.A.

liability of Government for Patel's remuneration.

This Government will be liable to pay the Patel's remuneration only from the date the merger is effected, as from that date he began to render service to this Government.

As regards the claim for refund of the assessment illegally recovered from the Patel by the Thakore, it appears that the claim is time barred. As it is stated that no such recovery is made by the Thakore since the year 1949, the question of recovery would not arise.

Sd/- P.M.LAD.
9/5.

Remembrancer of Legal Affairs.

U.R. to P.D., No. 7928 , dated the 12th May 1952.

SNT/3.7.

Legal Department.

L.D., R.I. 8206 dated 24-4-52.

It appears that the Thokore of Vijiria in Manwadi taluka has sold off (1) Karbhari's (2) Naib Karbhari's and (3) Talathi's buildings to private persons during 1947-1949. These buildings were used as officer's quarters by the respective officers and they vested in this Government accofding to G.L., P & S.D.No. 3449/47-G dated 24-2-51 and the Thokore had no right to sell them. It is also reported that the Thokore has not handed over possession of other buildings declared to be State property by Government, and has kept silent over a notice served on him by the Collector. The Thokore is not in receipt of a privy purse as he has signed only a zamindari agreement and in the circumstances, P & S.D. proposes to file a suit against him for recovery of the buildings. L.D. is, however, requested to advise.

SM/3.7.

Office of the R.L.A.

Suit against Thakore.

It may be possible to file a suit against the Thakore for possession of the buildings which belong to this State but as the matter arises out of a political agreement, it may be desirable to achieve the object by bringing political pressure through the Government of India. (Cf. R.L.A.'s opinions Nos.1224 dated 21st July 1951 and No. 6706 dated 30th April 1952).

Sd/- P.M.LAD.
12/5.

Remembrancer of Legal Affairs.

U.O. to P & S.D.No. 7965 , dated the 13th May 1952.

SMT/3.7.

OFFICE OF THE R.L.A.

The first question is whether it will be right to ask the Company to refund the collections made by it during the period from 10th June 1948 to 17th February 1949. It is true that though the orders issued in Government Resolution, Revenue Department No.4493/45, dated the 8th December 1948, may have contemplated retrospective operation in certain cases, it would not appear feasible in this case to give retrospective effect. A perusal of the orders in Government Resolution No.4217, dated 22-9-1937, shows that the grazing fees refund of which was directed to be paid were collected by Government agency. In this case the fees were not collected by Government agency; but the right of the Ruler of Palanpur to collect grazing fees was framed out in favour of the Company. The Company continued to collect the fees even after the merger of the State till 17th February 1949 when it was informed by the Collector that the Ijara was cancelled and that it should discontinue collecting the fees. It appears that till the Parwana was specifically cancelled the Company was allowed to continue to collect the fees. It appears therefore that the Company cannot now be made to refund the amounts collected during 10th June 1948 to 17th - February 1949. The Company will however have to pay the proportionate amount of the monopoly Fees to Government.

2. The next question is whether the Company can claim compensation on account of the premature termination of the Parwana. The answer to this question is in th negative. The Parwana in question

does ...

does not appear to have been granted under any provision of law as it stood in Palanpur and cannot be said to have been continued in force under the Administration of Indian States Order , 1948, because under Paragraph 7 of that order the levy of those taxes, cesses, fees etc. which before merger were being levied by any competent authority under any law in force could be continued. The terms of the Parwana in question cannot, therefore, be said to be binding on the Government of Bombay who stepped into the shoes of the Palanpur Government and the Company cannot claim any compensation on account of the premature termination thereof.

Sd/- P.M.LAD.
16/5.

Remembrancer of Legal Affairs.

U.R. to A & F.D.No. 8274 , dated the 17th May 1952.

SMT/3.7.

Legal Department.

Under clause (d) of the agreement entered into with the Thakore of Angad, it has been agreed that the Thakore is entitled to the full ownership, use and enjoyment of the properties referred to therein including the superior proprietory rights in all lands. This clause implies that the subsoil rights in the lands vest in the Thakore who will be entitled to dispose of sand and kankar therein. Although the Bombay Land Revenue Code has been applied to the village, the rights of the holder re subsoil products are saved by the proviso to section 65. The view taken by the Special Officer is not correct and no objection can be taken to the disposal by the Thakore of sand and kankar in the lands.

Sd/- J.R.Dhurandhar.
16/5.

Additional Secretary to Government,

U.R. to R.D. No. 8278, dated the 17th May 1952.

Legal Department.

The question raised in this case is whether Jamaiya jahagirdars in the merged State of Tharad are bound to pay the jama to the State of Bombay. Tharad was a semi jurisdictional State and the landholders known as Jamaiya jahagirdars used to pay the State jama an thana varad. It is contended by the jahagirdars that jama was a tribute which they used to pay to the Thakore personally for protection from Kosas who used to loot the area. It is no doubt true that a in the Palanpur Directory (Vol. II, p.525) it is stated that the jama was not the rent paid for a holding but is in the nature of tribute paid to the overlord. This statement does not, however, support the claim of the jahagirdars that they are not bound to pay the jama to the Bombay State after merger. In any case there is no evidence to show that it was a payment made personally to the Thakore who was the ruler of the State. In the report of the Alienation Enquiry Officer it is stated: "These jahagirdars are not at all like feudatoris paying tribute, but they are bound to pay to the Tharad Durbar a jama in proporation to he produce of the soil which the Durbar has the right to assess. They are not outside the ter itories, but within the jurisdiction and rank as the subjects of the tharad Durbar." It is stated that the Government of India affirmed the above view. If this is so, the contention of the jahagirdars that the jama was a tribute payable to the Thakore is not correct. The word "jama" does not necessarily mean poltical payment. It means land tax also (see Wilson's Glossary of Revenue Terms). In the Gujarat Taluqdars Act, 1883, the term jama was applied to the land revenue payable by Taluqdars to Government. The instructions of the Government of India contained in

their letter dated 4th August 1949 applied to payment made by one State to another. These instructions cannot apply to jahagirdars in the Tharad states who, as pointed out by the Alienation Enquiry Officer, are in no better position than landholders in the State. The whole question regarding alienations in merged States is before Government. Until a final ~~decision~~ decision is arrived at in the matter, there are no grounds for discontinuing the payment of the jama which the jahngirdars were paying to the Tharad State.

Sd/- J.R.Thurardhar.
23/5.

Additional Secretary to Government.

U.O. to R.D. No. 8634 / dated the 23rd May ,1952.

SHT/3.7.

Office of the R.L.A.

Clause (e) of the Agreement provides that until the land revenue payable by us to the Government of Bombay under~~ela~~ clause (d) is fixed according to law, we shall continue to pay t e same amount of total annual contribution whic we were liable to pay to Government of India and immediately before the merger on account of the administration of the estate together with any arrears that may be due etc. In Government Resolution, Revenue Department No.6860/49 dated 4th June 1951 wherein while issuing instructions to the Collector of Baroda for making arrangement for the recovery of Mewas Fund including arrears, it is made clear that "the Thakores of Sankheda and Mewas Estates are to pay 10 p.c. of their income for the administration f their estates which they used to pay to the Government of India prior to the merger, till settlement is introduced in these estates". Under section 93(1)(a) of the Bombay Local Boards Act, 1923 local fund cess is leviable at three annas on every rupee payable to the State Government as ordinary land revenue. As the Thakores are now liable to pay merely the amount of annual contribution which they used to pay to the Government of India before merger along with arrears due, such payment cannot be deemed as payment of ordinary land introduced in the estate. Consequently, no recovery of local fund cess can be made from the Thakores.

Sd/- P.M.LAD.
21/5.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8646, dated the 23rd May 1952.

SNT/3.7.

Legal Department.

Buildingss in merred States rented to postal Department- vesting of -

R.L.A's opinion No.17098 dated 16-10-1951.

The attention of the Public Works Department is invited to R.L.A's opinion No. 17098, dated 26th October 1951 relating to the post office building at Chota-Udepur. Although it is true that the Palanpur State had agreed to construct a building for the location of the Telephone Exchange at Palanpur, the building was not to vest in the Dominion Government for the governance of the State. It was to remain the property of the State and was to be occupied by the Posts and Telegraphs Department on rental basis. For the reasons stated in the opinion referred to above, the buildingsvests in the State Government, subject to the right of the Posts and Telegraphs Department to occupy it on payment of reasonable rent to be fixed by agreement between the State Government and the Posts and Telegraphs Department. The view taken in Additional Secretary's opinion No.5383 dated 4th April 1951 in regard to the Cambay Post Officer is not correct.

Sd/- J.R.Dhurandhar.
14/5

Additional Secretary to Government.

U.R. to P.W.D. No. 8085, dated the 15th May 1952.

SNT/3.7.

Legal Department.

The Barkhali Assistant at Baroda suggests that the notification issued by the Baroda Government, prohibiting alienations of guaranteed wants and giras lands, on 26th September 1911 should be cancelled. The reason for this suggestion is, that the wants and giras lands held by the girasdars are exempt from the payment of land revenue and although the Baroda Government had prohibited the alienation thereof beyond the life-time of the holders, the girasdars have alienated them and the lands have gone into the possession of strangers. The argument of the Barkhali Assistant is that the alienees who are not entitled to the exemption from assessment are holding the lands free of assessment, He, therefore, suggests that the Baroda order of 1911 referred to above should be cancelled. R.D. seems to agree with this view. This view is entirely wrong. If the order of 1911 issued by the Baroda Government is cancelled, the prohibition of or restriction against ~~xxxx~~ alienation which is imposed on the wants and giras lands will be removed and the girasdars will contend that they are free to alienate them as they liked. In any case, if the wants and giras lands are exempt from the payment of land revenue to consequence of the tenure on which they are held, the cancellation of the order of 1911 will not make them liable to full assessment If the exemption from land revenue is to be done away with, legislation will be necessary for the purpose. The whole question of alienations in merged States is before Government in R.D. and the point particularly raised in these papers will have to be considered when the decision is arrived at on that question.

Sd/- J.R.Dhurandhar.
23/5.

Additional Secretary to Government.

24th May 1952

SNT/3.7. U.R. to R.D.No. 8690 , dated the 24th May 1952.

11014/3-6-1952.

Submitted with reference to the Chief Secretary's note at page 304 ante. It appears that the "New Palace" at Rajpipla which has been recognised as the private property of the Maharaja of Rajpipla is at present in the custody of the Dowager Junior Maharani and Prince Indrajitsinhji, the step-brother of the present Ruler. The Office rooms in the place contain papers left by the late Ruler which the present Maharaja is anxious to look into as as he has to deal with income-tax returns, bills, etc. He has approached Government with a request that Government might help him in getting hold of the papers and the palace. In para 5 of h s note (extract at p.301 ante) the Chief Secretary has raised the question whether it would be feasible to ask the Collector to let His Highness have access to the papers and to screen off the portion of the palace where the office papers are kept. The H.L.A. is requested to advise.

SNT/3.7.

Office of the R.L.A.

The difficulties in the way of getting access to the papers and screening of the portion of the Palace where they are kept are of the same character as stand in the way of taking possession of the Palce itself. The parties may be advised to come to an amicable settlement. Failing that political coercion may be tried. Prince Indrajitsinhji may be asked by the Ministry of State to deliver possession of the papers on making an inventory as they are wanted for settling the disputes pending before the Government of India; and he may be told that if he does not accede to this request, Government will have to consider whether his allowance should not be stopped.

Sd/- P.M.LAD.
10/6.

Remembrancer of Legal Affa'rs.

U.R. to P & S.D.No. 9714, dated the 11th June 1952.

SNT/3.7.

Office of the R.L.A.

The question referred to the R.L.A. for advice is whether the property known as Deoghar Building at Shahpur can be treated as private property of the Raja of Sangli. The Collector of Belgaum in his letter at pages 1 and 2 ante reports that the building known as "Deoghar" is at present occupied by one Shri V.D.Apte a priest employed by the Raja of Sangli for worshipping the Raja's family deties which are housed there. The other half of the building is occupied by the Medical Officer, Shahpur. Before the merger of the Sangli State the building was looked after by the State P.W.D. This building has not been included in the list of the private properties of the Ruler. But after merger the maintenace of the building has been taken over by the P.W.D. When the Executive Engineer served a notice on the Pujari to vacate the premises, the pujari pointed out that "at the place where the Deoghar is situated there was formerly a Wada belonging to the Royal family where they used to stay off and on. A part of the wada was utilised for keeping the deities. Subsequently, the Wada was demolished and separate buildings such as the Mamlatdar's Office , High School, Deoghar, P.W.D. Stores Etc., were erected, in the year 1906." Enquiries made with the Collector of Belgaum also reveal that the priest is being remunerated by the Raja. From the report of the Mamlatdar, Belgaum, page 21 ante, it would be seen that the Deoghat was erected in the year 1906 excludively for the installation of the deities. It is true that the building in question has not been included in the list of private properties of the Ruler prepared in pursuance of the agreement of merger, but the Diwan to the Raja states that this property along with others remained to be mentioned in the list supplied to the Government. The Ruler is not, however,

precluded from making a claim to this property as private property. He is estopped from doing so (compare R.L.A's opinion No. 5872 dated 29th April 1950, in regard to the claim of th Maharaja of Baroda to two dpeh plots near Kalabhuvan) The fact that before the merger of the State this buildings was looked after by the State would not make much difference in the legal positi n as during the State regime little or no distinction was made between the State property and the private property of a Ruler. If the P & S.D. is esatisfied that the Deoghar had been constructed for housing the family deities of the Ruler as long back as 1906, and if the Ruler puts forth his claim to this property as private property, perhaps his claim will have to be conceded. But for this purpose the Government of India will have to be approached. Unless the above facts are disproved it may not be possible to treat the property as State property.

Sd/- P.M.LAD.
20/6.

Remembrancer of Legal Affairs.

U.R. to P & S.D.No. 10377, dated the 21st June 1952.

SM/3.7.

Legal Department.

There is no objection to examine all the cases in regard to which the Forest Settlement Officer has made his report, Except in cases in which the suits have been filed, Government may pass orders. In regard to cases which are the subject matter of the suits, Government should withhold passing any orders.

Sd/- J.E.Dhurandhar.
8/7.

Additional Secretary to Government.

U.O. to A & F.D.No. 11327 , dated the 9th July 1952.

SNT/3.7

OFFICE OF THE R.L.A.

Loss of Movables from Government custody.

The view taken by the Chief Secretary is correct. There is absolutely no reliable evidence to prove the loss of property by Shrimati Baimay Jahangirji Sethna and her son as alleged. If at all any loss has occured, she might claim re-imbursement from Rana Shree of Maddwa from whom she has purchased the house. It might be contended by Shrimati Baimay and her son that the house where her articles were stored was in the custody of Government before it was actually handed over to them after the purchase from Rana Shree of Mandwa, and consequently Government, being liable to account for the articles which were stored in that house, would be liable to re-imburse them the loss they have suffered. Even assuming that Government was in possession of the house during the period, that is to say, after merger and before the house was actually handed over to them, still Government wouldnot be liable in any way for the losse of moveable of Shrimati Baimay and her son. For the loss of moveable from Government custody owing to negligence of officers no action can lie against Government. (See Ram Gulam v. U.P. Government A.I.R. 1950 Allahabad 206).

Sd/- P.M.LAD.
15/7.

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 11767 , dated the 16th July 1952.

SNT/3.7.

Office of the R.L.A.

Income tax payable by Shahu Chhatrapati Mills.

It appears that under the Government Trading Taxation Act, 1926 as in force in 1943 Kolhapur State was liable to pay income tax, in respect of the income which accrued or arose in British India on account of the trade or business of Shri Shahu Chhatrapati Mills, Kolhapur carried on by it. The liability in respect of the tax payable for the year ending 31st December 1943 has not yet been ascertained. In the meanwhile the property and assets of Shri Shahu Mills Kolhapur have become vested in this Government by virtue of themerger. In the case of private parties this Government had taken up the defence that it is not liable in respect of the liabilities incurred by the previous Government and there does no appear to be any reason why this Government should be legally liable to pay the tax payable by the Kolhapur State. (Cf. Halsbury's Laws of England Vol. 26 page 255) Further under Art. 289 the property and income of this Government is exempt from Union taxation unless a special law as contemplated by sub-clause (2) of that Article is enacted. Property of Shree Shahu Chhatrapati Mills is today the property of this Government and as such exempt from taxation even on the income which accured to Kolhapur State.

Sd/- P.M.LAD.
5/5.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 7043. dated the 5th May 1952

Office of the R.L.A.

There is no objection to follow the line of action indicated by Assistant Secretary, Development Department but in the first instance the Income tax officer may be approached under section 27 of the Income tax Act for cancellation of his order and reassessment, if any, in the light of the legal position stated in R.L.A.'s opinion at page 29 ante.

Sd/- P.M.LAD.
3/6.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 9485, dated the 6th June 1952.

SNT/4.7.

Office of the R.L.A.

It appears that the Baroda Government had sanctioned the Lesser Millets Scheme and the same was financed by the Government and the Indian Council of Agricultural Research on a 50:50 basis. It appears that certain State employees were working in the Scheme under the administrative control of the Baroda State Government and not under the Council and the employees were governed by the State Service Rules. The liability of the Baroda State Government to its share towards the contributory provident fund will, therefore, devolve on the Bombay Government after the merger of the Bareda State in the Bombay State.

Sd/- P.M.LAD.
25/7.

Remembrancer of Legal Affairs.

U.R. to A. & F.D., No.12375 , dated the 26th July 1952.

SNT/4.7.

Office of the R.L.A.

The view taken by P. & S.D. at 'A' of its office note is correct. Dr. Kurtakoti resigned the Jaghir attached to the Kolhapur Nath so far back as in 1918 and the Kolhapur Darbar issued an Order on the 5th February 1919 appointing Pitre Swami as Shankaracharya of Karvir Nath. Since the Pitre Swami began to enjoy the property of the Nath and after his death his disciple has been in enjoyment thereof. Apparently, therefore, Dr. Kurtakoti is out of possession of the Nath property for ever 33 or 34 years. The Comprise Decree of the Privy Council between Dr, Kurtakoti and Shri Waikar doesnot confer on Dr. Kurtakoti any enforceable right. All that the Compromise Decree says is that "if Dr. Kurtakoti takes back the villages of the income of the Karvir Nath and beginse to enjoy the same himself he should go on paying to the Waikar Swami or his disciple in lineal succession one-half share of that income every year up to his death." It is, therefore, apparent that the Compromise Decree would be of no avail to Dr. Kurtakoti for restoring to him the possession of the Karvir Nath property. It is true that the Bombay Government has succeeded to the rights of the Kolhapur Darbar, but the Kolhapur Darbar having recognized pitre Swami as Shankaracharya of Karvir Nath, and allowed him possession and enjoyment of the property for a number of years, any decision which may now be taken will affect the rights vested in Pitre Swami and his successors, In these circumstances Dr. Kurtakoti should be asked to seek relief in a civil Court.

Sd/- P.M.LAD.
12/6.

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 9899, date the 13th June 1952.

Office of the R.L.A.

Refund of excise duty.

Even though there are some distinguishing features as pointed out by the Director of Excise and Prohibition in his letter at pp. 19-21 ante, still the main principle laid down in Additional Secretary's opinion No.5790, dated the 11th April 1951 will apply to these cases also and Government cannot legally be made liable to pay the refund. However, under clause(b) of the Agreement executed by the Thakores of Kadoli and Sihora it has been provided that all their duties and obligations pertaining or incidental to the Government of the Taluka shall devolve on the Government of Bombay. It is not open to the licensees to enforce the obligations assumed by Government under this clause; but in view of this undertaking, it is for Government to decide whether the refund should not be paid as per terms of the contract if it is considered that the obligation to refund assumed by the Thakore was incidental to the governance of his estate.

Sd/- P.M.BAD.
25/7.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 12389, dated the 26th July 1952.

SNT/2.7.

Office of the R.L.A.

Transfer of N.K. High School, Petlad.

The orders of the Baroda Government dated 30-4-1949 directing the transfer of the N.K. High School, Patlad to the Petlad Education Trust has not been implemented and that order is found to be unreasonable inasmuch as it provides for a lease of the school premises for 99 years without any right of Government to forfeit the lease even in the case of misuse of the lease property. It would, therefore, be open to Government to inform the Trust that the Baroda Government's order would not be binding on this Government and to offer to transfer the school on new terms to the Trust and in case the Trust is not agreeable, to any other educational body.

Sd/- PLM.RAD.
30/7.

Remembrancer of Legal Affairs

U.R. to E.D., No. 12692, dated the 31st July 1952.

SHT/4.7.

19557
18-8-52.

P.51 of Corresp.

The Baroda State became a constituent of the "Indian" Council of Agricultural Research in the year 1932 and agreed to pay a sum of Rs. 1,00,000/-. Though the contirbution was required to be paid in one instalment, the "Indian" Council allowed some of the Stated to pay the amount in instalments ever a number of years. A sum of Rs. 15,000/- remained to be paid by the Baroda State when it merged with Bombay in the year 1949. The question raised is whether the Bombay Government is liable to pay the said amount to the "Indian" Council of Agricultural Research.

SHT/4.7.

OFFICE OF THE R.L.A.

Though the reasons adduced by the Government of India against the R.L.A's view are not ~~xxx~~ at all convincing, it may not serve any useful purpose to carry on the contreversy when the Stake is small. The A. & F.D. may accept the liability and pay the amount.

Sd/- P.M.LAD.
22/8.

Remembrancer of Legal Affairs.

U.R. to A. & F.D.No. 13817, dated the 23rd August 1952.

SMT/4.7.

Office of the R.L.A.

There is no provision in the Baroda Gemmokari Rules similar to section 10 of the Bombay Hereditary offices Act, 1874 for issuing a certificate to get the decree vacated. Consequently the Collector will have to proceed with the execution of the decree for ~~xxx~~ partitioning the Chakariat lands. After Pradhanji is put in possession of his share of lands, the same may be resumed by the Collector on the ground that Pradhanji not being an officiator was not entitled to retain possession thereof.

Sd/- P.M.LAD.
8/9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14783/B, dated the 10th September 1952.

SNT/4.7.

L.D.R.I.No. 22359, dt. 27-10-51.

Submitted.

The District Magistrate of Mehsana has reported that there are seven cases under the Baroda Dhor Nibandha and four cases under the Baroda Daba Niyam pending in the Court of the Resident First Class Magistrate, Patan, in respect of offence alleged to have been committed before the date of the merger of the State and prior to the application of the Cattle Trespass Act, 1871, to the Mehsana District. According to the provisions of the Dhor Nibandha and Daba Niyam, only the Vahivatdar (Mamlatdar) is authorised to take cognisance of the offences and in view of these provisions the Asstt. Public Prosecutor has opined that the cases should be tried by the authority empowered to try them by the Acts in question; and the Magistrate would not be competent to try them. As the matter is not free from doubt, it is referred to R.L. . for advice.

SNT/4.7.

Office of the R.L.A.

As regards the four cases filed before 30 th July 1949 the Mamlatdar before whom they were panding would have been competent to try them. As regards the other cases filed after 30th July 1949 the position is not free from doubt but the safer course is to let the Magistrate before whom they are filed try the cases. In any case as all the cases are now before a judicially Resident Magistrate it should be left to him to decide ~~judicially~~ the question of his juriddiction.

Sd/- P.M.LAD.
18/7.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 15413/A, dated the 19th September 1952.

SNT/4.7.

OFFICE OF THE R.L.A.

The question referred to the R.L.A. for consideration is whether the Government of Bombay as the successor of the Government of Baroda is bound to continue to pay the annual grants of Rs. 3610-14-0 and Rs. 1705-2-0 which the Baroda State was paying upto its merger with Bombay to the Devasthans at Prabhas Pattan and Prachi. Under the treaty of 1813 between the Maharaja of Bared and the Nawab of Junagad. (in which State these temples were then situate) the former secured the right to manage the shrines, to carry out repairs to the temples and to appoint pujaris, etc. The circumstances which led to the treaty of 1813 were that Junagadh State being a Mahomedan State the Ruler of Baroda was afraid that the holy temples would be neglected. The Maharaja of Baroda was therefore trying to assert his claims over the management of the temples. The enforcement of the right of management of the temples was a point of prestige with the Baroda Government, and that was why the Baroda State continued to sanction the necessary expenses of the management every years. The State of Junagadh having merged with Saurashtra the circumstances which originally led the Ruler of Baroda to interfere with the management of the temples do not exist now. The temples are situated in the State of Saurashtra and they were not owned by the Ruler of Baroda (like other temples situate in Benares etc.) In fairness it would, therefore, be for the Saurashtra Government to attend to their management in the present circumstances, the more so because the management of the Somnath Mahadeo Temple for which a major portion of the grants paid by the Baroda Government was being utilised has already been transferred to that Government. In law the Government of Bombay will be within its rights if it discontinues the payment.

Sd/- P.M.LAD. 18/9.

Remembrancer of Leg l Affairs.

SRT/4.7. U.R. to P.D. No. 15455 /A , dated the 19th September 1952.

Office of the R.L.A.

It is true that Shri Rupase Ramji has purchased the land in question from the Thakore of Tharad on payment of price. But the question of settling the lists of private and State properties had not been decided and now the land h s been declared to be State property. Pending the preparation of the list it was not proper on the part of the Thakore to dispose of the land by sale. The land having now been held to be State property it would be competent for the State Government to demand back its possession from Shri Rupasi Ramji or to oust him from it. As this would be a matter arising out of the agreement of merger it would be possible to resist action if any commenced in a Court of Law by the purchaser. Moreover in that case it may also be possible for the purchaser to file a suit against the Thakore claiming return of the money paid by him. In these circumstances the course suggested by the Political and Services Department appear to be feasible.

Sd/- P.M.LAD.
26/9.

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 15907/A, dated the 28th Septr, 1952.

SNT/4.7.

Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the Government of Bombay as the successor of the Cambay Darbar is under an obligation to pay to the Western Railway a sum of Rs. 3,574-6-0 on account of the interest and maintenance charges of the Railway siding and loading platform constructed and maintained by the Tarapur Cambay Railway, for the purposes of the Cambay Mills. The claim is in respect of the period from 1929 to 1943 during which the Mill was owned by the Cambay Darbar. In the year 1943 the Mill was sold by the Darbar to Shri Vijay Laxmi Cotton Mills Co. Ltd. Four years thereafter the General Manager of the then B.B. & C.I. Rly. which had been appointed to administer the Tarapur Cambay Railway wrote to the Dewan of the State to pay the amount in question, but the claim was not conceded. Now after merger the Railway Administration is claiming the amount from this Government. The only argument advanced by the General Manager in support of the claim is that though the cost of the construction and maintenance of the siding and the platform was borne by the Cambay Darbar, the Tarapur Cambay Railway and the Cambay Mills were two different concerns of the Darbar. In other words it is contended that it was necessary to transfer the amount in question from the account of the Cambay Mills to that of the Tarapur Cambay Railway. This contention will not however assist the Western Railway in claiming the amount from this Government. The siding and the platform were constructed for the benefit of the Mill which is not now owned by the State. Even according to the General Manager the amount in question would have been debitable to the account of the Cambay Mills and not to the general revenues of the Darbar. This Government.

cannot be held liable to make ~~xOfficexxfxdkexx~~ a payment from out of the general revenues of the State in respect of the pre-merger period, especially when the Railway Administration itself in its capacity as the Manager of the Tarapur Cambay Railway was not prompt enough in settling the claim with the Darbar. In the circumstances the claim of the Railway should be resisted. The Railway Administration may press their claim against the present owners of the Mills if so advised.

Sd/- P.M.LAD.
3/10.

Remembrancer of Legal Affairs.

U.O. to P.W.D. No. 16296/A, dated the 4th October 1952.

SNT/4.7.

OFFICE OF THE R.L.A.

The legal position seems to be this. After the lapse of paramountcy on 15th August 1947 the Gabat Estate came under the Control of the Regional Commissioner who was appointed by the Central Government. Then the Gabat State merged in Bombay on 4th June 1948 under an Order issued by the Government of India in exercise of the Powers conferred on it under the Enlargement of Area and Alteration of Boundaries Order, 1948. Under the said order the Governor of Bombay could have passed an order for transferring the cases pending before the Regional Commissioner to some Court. But no such orders came to an end on 10th December 1948. Before that date the P & S.D. had issued two notifications, one on 8th June 1948 and another on 15th June 1948. By the former notification the merged area was included in the Mahikantha District, and by the other notification all the laws in force in Bombay were extended to the merged area. A third notification was issued on 22nd September 1948 providing for the transfer of Civil and Criminal cases pending before the former courts. But this notification does not, unfortunately provide for the cases pending before the Regional Commissioner. All the former Courts were abolished on 10th June 1948.

The result therefore is that no provision having been made for the transfer of appeal petitions pending before the Regional Commissioner, and the Court of the Regional Commissioner having been abolished, the cases pending in that Court must be deemed to have lapsed.

As the proceedings are already before the High Court perhaps that Court may be requested to decide the question if it had been properly seized of the matter. The High Court would be in a better position to decide thhe matter judicially after hearing both the parties. Government may inform the High Court that the petitions are not of a

political ....

political nature and no order was made by the Governor under the Bombay (Enlargement of Area and the Alteration of Boundaries) Order, 1948 for the transfer of such petitions to the High Court.

Sd/- P.M.LAD.
10/10.

Remembrancer of Legal Affairs.

U.R. to P & S.D. No. 16758/B, dated the 11th October 1952.

SMT/4.7.

OFFICE OF THE R.L.A.

The whole transaction appear to be main fide intended to benefit the Ruler at the expense of the State. The loan of Rs. 2,000 has been advanced by the Jawhar State to Shri B.S.Jadhav at a concessional rate of interest with a view to develop the Ruler's lands Further, the liability has been imposed on the State to pay rent of the land during the period of 10 years to the Ruler without claiming any amt from Shri B.S.Jadhav. It is, therefore, apparent that the Ruler has managed to enter into this transaction for developing his own land without any cost to him. Besides, Shri Jadhav has not entered into any written agreement with the State for repayment of the loan. In those circumstances, Government may repudiate the whole transation and take steps to recover the amount from Shri Jadhav by a regular suit. Further, Government may also inform the Ruler that Government would not be liable to pay his rent of the land and he may proceed against Shri Jadhav for recovering therent if he so desires. The proposal made by R.D. is feasible.

Sd/- P.M.LAD.
20/10.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 1742A, dated the 21st October 1952.

SNT/4.7.

Office of the R.L.A.

In view of the reply of the Government of India the only feasible course would be to file a suit for eviction against the Thakor and the purchaser and the Collector may be asked to take steps for the purpose.

Sd/- P.M.LAD.
3/11.

Remembrancer of Legal Affairs.

U.O. to P & S.D. No. 18359/A, dated the 5th November 1952.

SNT/4.7.

Legal Department.

R.I. No. 21252, dated 11-9-1952.

Submitted.

This file deals with the question of recovery of Jama dues from the Vanod State (now in Saurashtra) which it owed to Baroda State. In view of the Govefnment of India, Ministry of States letter Government of India, Ministry of States letter No.D.5286-P/50, dated the 24th June 1950 the Saurashtra Government is of he view that the Jamabandi amount in question cannot be recovered by this Government after 15-8-1947. The Revenue Department however does not agree with this view and states that the two terms "tribute" and "Jamabandi" used in the Government of India Letter are distinct and different; that the reference to "Jamabandi" in the first sentence of the letter is due to the factual character of the statement but its absence in the second one seems deliberate and shows that after 15th August 1947 only tribute recoveries will lapse but the same is not the case with the recoveries in respect of Jamabandi. The Revenue Department and P & G.D. therefore hold that the Government of Saurashtra has not correctly interpreted the Government of India's letter in question and the amount of Jamabandi can be reeqvered from Saurashtra Government. The R.L.A. ise requested to advise whether the above view is correct.

SMT/4.7.

Office of the R.L.A.

Prima facie the view taken by the Revenue Department and concurred in by the Political and Services Department is correct. However, the Central Government may be requested to clarify the position.

Sd/- P.M.LAD.
12/11.

Remembrancer of Legal Affairs.

U.O. to ..D., No. 18928 / A, dated the 13th November 1952.

SNT/4.7.

OFFICE OF THE P.L.A.

Article 3 of the merger agreement form executed by the Thakore of Tharad provides :-

Article 3.

"The .. .. shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement.

The .... will furnish to the Dominion Government before the ..... day of ... .1948 an inventory of all the immovable property, securities and cash balances held by him as such private property.

If any dispute arises as to whether any item of property is the private property of the .... or State property, it shall be referred to such officer with judicial experience as the Dominion Government may nominate and the decision of that officer shall be final and binding on both parties."

Para. 1 of this Article expressly gives a right to the Thakore to claim his private property and such property has to be determined in accordance with paras. 2 and 3. It is no doubt true that in the present case the Thakore failed to furnish the inventory of his private property before the prescribed date in spite of numerous sequests made by Government. But the failure to furnish the inventory would not extinguish the right of the Thakore under para. 1 to claim his private property nor can it affect the right to have the matter settled in accordance with the provisions of para. 3 of this Article. This Government has in consultation with the Government of India in the Ministry of States taken a decision as regards properties which should be accepted as the private properties of the Ruler. As the Thakore however is not agreeable to this decision there would evidently arise a dispute within the meaning of para. 3 of the said Article and as such the dispute would have to be settled accordingly.

Sd/- P.M.LAD.
13/11.

Remembrancer of Legal Affairs.

SNT/4.7. U.R. to P & S.D.No. 18981/A, dated the 14th November 1952.

Office of the R.L.A.

Merger Agreements executed by Thakores of Pandu Mewas Estates - Abkari Revenue - whether private property.

Though the amount in question was lying in the sub-treasury of Pandu Mewas as "anamat" it would be a property vesting in the Thakores within the meaning of clause (c) of the agreements executed by them as it was recovered by the regional authorities on behalf of the various Thakores. In his letter dated the 9th May 1952 the Director of Excise and Prohibition has observed that the Thakores were absolute owners of their estates and were entitled to receive allrevenue or income accruing from their estates for their own use after defraying expenses for the management or administration. He has also observed that no part of the abkari revenue collected by the authorities concerned and received by these Thakores was being appropriated for administering the estates. If, therefore, as stated in this letter the abkari revenue received by the Thakores was not drawn upon for public purposes; but was utilised by them for their own use then the same wouldnot be covered by clause (c) of the agreement and as such they would be entitled to claim the amount as private property. The view taken by R.D. is correct.

Sd/- P.M.LAD.
17/11.

Remembrancer of Legal Affairs.

U.H. to R.D., No. 19212 / A, dated the 18th November 1952

SNT/4.7.

Office of the R.L.A.

Merger agreement- Private property of Chief of Surgana two jagir villages -

The case considered by the Additional Secretary in his opinion No. 2726 dated the 13th February 1951 related to the Sheri lands which on the merger of the Kolhapur State were declared by Government as the private property of the Maharaja of Kolhapur. Sheri lands are grants of soil whereas jagirs may or may not be grants of soil. Consequently, that opinion of theAdditional Secretary would not apply to the present case which relates to the jagir villages. It is true that under artiale 3 of the maeger agreement executed by the Chief of Surgana the jagir villages of Khobla and Chuli have been recognised as his private property and as such he is entitled to the full ownership, use and enjoyment thereof, but the agreement does not purport to invest in him more rights or interest in respect of these villages than what he in fact possessed prior to the execution of the merger agreement. Consequently, if these jagir villages were originally grants of revenue only, it would not be open to the Chief of Surgana to claim any proprietory interest in these villages by virtue of the merger agreement and and he would be entitled merely to the revenue of these villages. The question whether the original grant of these villages was of revenue only or of soil would be material before recognising the right of the Chief to the lands in the villages.

Sd/- P.M.LAD.
28/11.

Remembrancer of Legal Affairs.

U. O. to P & S.D., No. 20001/A, dated the 28th November. 1952.

SNT/4.7.

L.D.R.I.No. 27666 dt. 15-11-52.

In connection with the matter of paying compensation grants under Section 9(1) of the Bombay Motor Vehicles Act, 1935 to the Municipalities and Local Boards from the merged States, (which were lying tolls and which have been abolished on the application of the B.M.V.T. Act, 1935 to them), the question raised for the consideration of the R.L.A. is, whether the executive orders issued by the Rulers or Administrations of the Indian States ordering the Local bodies not to levy the toll tax on motor vehicles has the force of an Act.

SNT/4.7.

Office of the R.L.A.

The order issued by the Ruler of a merged State under a Statutory provision prohibiting a local authority from levying toll on motor vehicles had obviously the force of law. Even if such order were issued by him otherwise than under a statutory provision, it had equally the force of law, for the Ruler, being the supreme head of the State, possessed the law making power except in cases where the constitution adopted by some State, had expressly taken away the prerogative right of the Ruler.

Sd/- B.M.LAD.
28/11.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D.No. 20160/A, dated the 2nd December 1952.

SNT/4.7.

Office of the R.L.A.

The main grounds urged by the Ruler of Baria are :

(1) The villages granted to his brother by his late father were resumed by Government on 29th October 1951 which resumption being prior to the date of contract of sale of mhowra flower trees in the forests of the villages dated 7th August 1951 would not affect the contract and consequently the contract for sale of the trees for Rs. 50,000 entered into between the Rajmata as guardian of his minor brother and the contractor would be binding on Government.

(2) The contract of mhowra flower trees dated 7th August 1951, being practically a transfer of the original contract to new parties, is binging on Government.

The legal effects of a cession of territory have been stated by the Privy Council in Secretary of State for India in Council v. Bai Rajbai (42 Indian Appeals 229 at p. 237) as under :

> "The relation in which they stood to their native soverigns before this cession, and the legal rights they enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry in under the new regime the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new sovereign, were those, and only those, which that new sovereign, by agreement expressed or implied, or by legislation, chose to confer upon them. Of course this implied agreement might be proved by circumstantial evidence such as the mode of dealing with them which the new sovereign adopted, his recognition of their old rights, and express or implied election to respect them and be bound by them, and it is only for the purpose of determining whether and to what extent the new sovereign has recognised these ante-cession rights of the kahbatis, and has elected or agreed to be bound by them, that the consideration of the existence, nature or extent of these rights becomes a relevant subject for inquiry in this case. This principle is well established, though it scarcely seems to have been kept steadily in view in the lower Courts in the present case."

It is apparent from the aforesaid observations of the Privy Council that the brother of the Ruler of Baria to

which were in existence anterior to the cession of the Baria State. He could claim only those rights which have been expressly or impliedly recognised by Government. It is true that the villages were actually resumed by Government on 29th October 1951 but it was known to the Ruler of Baria as well as his brother that the question of resumption of these villages was under the consideration of Government and on 2nd February 1951 the Divisional Forest Officer had written to the Private Secretary of the Ruler that the sale of any trees in these villages should be stopped till the whole matter regarding the resumption of the villages was finally decided by Government. The Ruler and his brother cannot be said to be unaware of this communication made by the Divisional Forest Officer to the Private Secretary of the Ruler. It may be true that the revenue of these villages up to the date of resumption was handed over to the brother of the Ruler of Baria but that would not mean any recognition, either express or implied, of his right to these villages by Government, particularly when the Ruler and his brother were quite aware of the consideration of resumption of these villages by Government.

So far as the second ground urged by the Ruler of Baria is concerned, he has stated in his letter dated 14th November 1952 that the contract for the cutting of trees of the five villages of his brother was originally given in June 1949 to one Chandulal Khalabha and that contract fell through as the contractor could not pay the stipulated amount in time and a fresh contract also fell through for the same reason and ultimately the present contract was entered into with Sulemanji Haji Gulmalli. He says that the third contract is practically a transfer of the original

contract to new parties and not a new contract. There is absolutely no substance in this contention. When the first two contracts were terminated, the third contract entered into with a different party would not be either a continuation of the first two contracts or a revival of any of them. In these circumstances, there is absolutely no substance in the grounds urged by the Ruler of Baria and the contract entered into between the Rajmata as guardian of the minor brother of the Ruler of Baria and Sulemanji could not survive the resumption of the five villages.

It is urged by the contractors that he entered into the contract when the villages were in rightful possession of the Maharajkumar under the bonafide belief that he was the full owner and consequently his rights under the contract could not be affected by the resumption of the five villages. Under section 14 of the Indian Sale of Goods Act, there is an implied undertaking as to the title of the goods sold. In Rayland v. Divall (1923, 2 K.B. 500) the plaintiff, who purchased a motor car and used the same for some months but was compelled to surrender the same to the true owner owing to the seller's defective title, was held to be entitled to recover the full price paid as on a total failure of consideration. The resumption of the five villages has the effect of total failure of consideration for the contract and the contractor would be entitled to claim refund of Rs. 12,500 paid to the Maharajakumar under the contract. When the Maharajkumar, represented by his guardian the Rajmata, had full knowledge of the resumption proceddings and the previous contracts had fallen through presumably on this ground, the contractor cannot urge that he is a bona fide purchaser for value without notice. He would suffer no less by the act of resumption as he can claim refund of the amount from the

Maharajkumar. In these circumstances, the contractor can have no claim against Government. If a suit is filed either by the Maharajkumar or by the contractor, it would be defensible.

Sd/- P.M.LAD.
6/12.

Remembrancer of Legal Affairs.

U.O. to A & F.D., No. 20787/A, dated the 9th December 1952.

SHT/4.7.

Office of the R.L.A.

Merger Agreements – repudiation of Tharav issued prior to merger.

On the eve of the merger of the Sant State in the Province of Bombay, the ruler of that State issued Tharav No.371 on 12-3-1948 under which Jiwai, Patawat, Inami, Chakriat and Dharmada village jagirdars were given which they had not till then, full forest rights over the villages in their charges The Bombay Government after considering the implications of the Tharav decided that the order was mala fide and cancelled it on 8-7-1949. By the time these orders were issued, the tree growth in jagir forests concerned was already sold by some of the jagirdars and the trees cut. Further cutting of trees and export of trees cut was, however, stopped by the Forest Department on receipt of these orders. Afterwards the Conservator of Forests allowed the export of cut material up t the station depot on taking a written undertaking from the owner of the material to the effect that the owner will abide by the ultimate decision of Government. The questions that are being considered in this file are as follows :-

(1) Whether jagirdars had forest fights from old times or whether the Tharav of 12-3-48 newly created them;

(2) whether the Tharav is binding on the successor Government both by law and under the agreement of integration, especially in view of paragraph 7 of the collateral letter issued by the Government of India at the time of the execution of the merger agreement that no order passed or action taken by the ruler before the date of making over the

administration ——

administration to the Dominion Government will be questioned unless the order was passed or the action was taken after 1-4-48 and is considered by the Government of India to be palpably unjust or unreasonable. The Government of India assured that the contents of ~~the~~ that letter will be regarded as part of the merger agreement entered into by the ruler with the Governor-General of India;

(3) whether the contracts for sale of forest trees entered into after passing of the Tharav were valid till at least the Tharav was cancelled by Government.

The R.L.A. is requested to advise.

2. The Tharav No. 371 issued by the ruler on the 12th March 1948 clearly states that Jiwai, Patawat, Inami, Chakriat and Dharwada village jagirdars, were not given any forest rights prior to the issue of the said Tharav and that they were being given to them by it only on considering the complaints from some jagirdars in that behalf. In his report, the Forest Settlement Officer has also clearly indicated that the jagirs practically were left without any rights to enjoy the jagiri forests freely. Even as far back as 1882 the ruler had prohibited the jagirdars to cut 16 varieties of trees or to remove material of any such tree without first ontaining the permission from the State authorities. In Tharav No.257 issued on the 16th February 1924 it has been categorically stated that all rights to State forests entirely belong to the Sant Darbar except in cases where the Darbar had granted such rights by a special document. From 1941-42 onwards the Darbar appears to have definitely made it clear that the State is the sole and the exclusive

proprietor ——

proprietor of all trees wheresoever situated. It therefore, appears clear from this that whatever were the rights of the jagirdars over the forests in the past, at the time of the issue of the Tharav of 1948 all the forests in the jagiri villages except perhaps the Harpur jagiri forests vested in the Sant State. The statement made in the Annual Administration report in this behalf also support this view. The view taken in para 8 of the A & F.D. note that in cases where sanads are produced, non-mention of the word "forest" therein should not be taken to mean that the forest was not included in the grant if full rights to trees, leaves, etc., were conferred, does not, thereforem appear to be correct.

3. It is a well known principle that on a cession of territory, by treaty or by conquest, the inhabitants of the ceded terrirory would have only such rights as the new sovereign had through his officers recognised. The fact that such rights had existed during the previous regime would have no significant or relevance at all. (Cf. Vajesinhji v. The Secretary of State 26 Bom. L.R. 1143 and Syed Asrar Ahmed v. The Durgah Committee Ajmer. 49 B.L.R. 235) The State Government in this case has not only not recognised the rights of the jagirdars in the forests but has specifically repudiated the orders issued by the ruler on the 12th March 1948 in that behalf. It is true that that order having been issued before the 1st April 1948 is covered by paragraph 7 of the collateral letter of the Government of India issued to the ruler of the Gujarat State and that the contents of that letter are to be regarded as part of the merger agreement; but it has been held by the Privy Council that even if a treaty of cession stipulates that certain inhabitants —

in habitants should enjoy certain rights, that does not give a title to these inhabitants to enforce these stipulations in municipal court and that the right to enforce remains only with the high contracting parties. Neither the jagirdars nor the contractors in this case can, therefore, go to a court of law on the strength of the said collateral letter. Moreover, the collateral letter is a document of political nature and its interpretation co not be restricted to its literal terms. As the Tharav issued by the ruler in 1948 has been considered by Government to be mala fide and the same has already been repudiated, it is not binding on this Government both by law and under the agreement of integration inspite of the assurance contained in the collateral letter.

4. As pointed out above, orders issued by the predecessor Government are not binding on its success of unless they have been accepted by the latter. Since the Tharav in question itself has not been recognised by Government but has been specifically repudiated, everything done in pursuance of it including the contracts entered into after the issuing of the Tharav are not valid and therefore binding on this Government. The date of repudiation of the Thara would be immaterial in this connection . On account of its repudiation, the Thavav is bad in law ab initio and the question of its cancellation with effect from the date of its issue does not therefore arise. In view of this position it would be competent for the Government, to claim the amount realised by the parties concerned by sale of trees cut during this period. Of course, Government may give some compensation ex-gratia to the parties who are affected and have incurred some expenditure in cutting and removing the trees. ——

the trees. It appears to be the intention that the contracts entered into by the jagirdars and contractors are not to be recognised. If so, the question of realising any amount from the jagirdars would not arise because the trees have actually been cut and removed by the contractors and as such they will be liable to make good the loss sustained by Government. As regards the amount paid by the contractors to jagirdars, it is for them to recover it from the latter through court.

Sd/- P.M.LAD.
27/12.

Remembrancer of Legal Affairs.

U.O. to A. & F.D.No. 22004/A, dated 29th December 1952.

SMT/5.7.